

### REMARKS

Claims 1-8 and 47-76 are pending in this application. Claims 1, 4, 6, 7, 47, 48, 60, 66, 74 and 76 are amended herein. Claims 2-3, 5, 8, 49-59, 61-65, 67-73 and 75 remain unchanged. No claims have been added or cancelled.

#### ***Requirement for New Oath/Declaration***

In response to the requirement by the Examiner for submission of a new oath or declaration to replace the original declaration that was found defective, we submit herewith a new declaration identifying the application by serial number and filing date and signed by the inventor with his post office address.

#### ***Objections to the Specification***

The Examiner objects to the specification on several grounds, relating to the use of reference numerals.

First, the Examiner states that reference number 27 is defined as "the forward edge of the most forward groove" at p. 4, line 1, and then reference number 39 is "referred to as the same" at p. 4, lines 27-28. Applicants respectfully note that different numbers are used because the element referred to with reference to Fig. 2 (the reference at p. 4, line 1) is a groove on the upper surface of the outsole, while the element referred to with reference to Fig. 3 (the reference at p. 4, lines 27-28) is a groove on the lower surface of the outsole.

Second, the Examiner notes that reference number 37 is used to refer both to the upper backfoot region and to additional grooves. This error has been corrected by changing the reference number for the additional grooves to 38. Fig. 3 has been corrected accordingly.

Applicant respectfully requests that these objections be withdrawn.

#### ***Objections to the Drawings***

The Examiner has pointed out various errors in the informal drawings. Applicant has corrected these errors. A copy of Figs. 1-4, with corrections marked in red ink, is submitted

herewith for the Examiner's approval. A copy is being sent under separate cover to the Official Draftsman.

***Rejections Under 35 U.S.C. §112, Second Paragraph***

Claims 4, 6, 7, 47, 60, 66, 74 and 76 have been rejected as being indefinite.

With regard to claims 4, 6 and 7, in response to the Examiner's remarks Applicant has amended these claims by replacing "shoe outsole" with "outer member", language that is more consistent with Applicant's specification.

With regard to claims 47 and 76, Applicant has amended these claims to clarify the location of the intermediate member.

With regard to 60, 66 and 74, Applicant has amended these claims to clarify that it is the outer member that is being referred to.

With regard to claim 76, Applicant has amended this claim to clarify the relationship between the inner member and intermediate member.

It is believed that these amendments overcome the rejections under 35 U.S.C. §112, and Applicant respectfully requests that these rejections be withdrawn.

***Rejections Under 35 U.S.C. §102***

Claims 1 and 4-7 have been rejected as being anticipated by Tomat.

Applicant's claims, as amended, recite a shoe outsole for a baby shoe, i.e., a shoe outsole that is dimensioned for use in a baby shoe.

Tomat does not teach or suggest a baby shoe or an outsole for such a shoe. Instead, Tomat is directed solely to methods of manufacturing shoes. Moreover, as discussed in paragraph 11 of the Declaration of David Thorpe (submitted herewith), it is clear that the Tomat shoes are adult shoes because of the relatively thick, inflexible outsole and the required bulky insole 12, which would not be suitable for use in a baby shoe. As a result, Tomat does not anticipate Applicant's claims as amended.

Applicants respectfully request that this rejection be withdrawn.

***Rejections Under 35 U.S.C. §103***

The remaining claims have been rejected as unpatentable in view of Tomat (claim 76) or Tomat combined with Patterson (claims 2-3), Lennihan (claim 8), Turner (claims 47, 49-59, 61-65 and 67-73), or Turner further in view of Lennihan (claims 48, 60, 66, 74 and 75).

As noted above, Applicant's claims, as amended, recite a shoe outsole for a baby shoe. Applicant's amended claims further require that the softer durometer inner member be positioned and dimensioned to fit under a baby's heel during use of the baby shoe.

After studying the gait of babies who are learning to walk, in a study conducted by the assignee (Stride Rite) and Connecticut Children's Medical Center (CCMC), Applicant discovered that providing this inner member allows babies to comfortably roll from heel to toe in a correct walking gait. The relatively soft inner member also tends to reduce the wobbling that many babies exhibit when walking in conventional relatively stiff-soled baby shoes. The Stride Rite research and development project that utilized the gait information obtained from the CCMC gait study is discussed in the Declaration of David Thorpe, paragraphs 4-10.

The gait study confirmed that gaits of first walkers (babies learning to walk) are different from those of experienced, adult walkers, and raise different concerns. For example, walking barefoot was generally easier for first walkers than walking in the shoes that were tested. These shoes tended to cause the babies to wobble. The study also showed that a baby's foot naturally rolls from heel to toe in a proper gait, whereas the shoes that were tested introduced improper side-to-side motion. The gait study also determined the profile of pressure exerted on the sole of a baby's foot during walking, which allowed Stride Rite to identify areas of relatively higher pressure. (Declaration of David Thorpe, paragraph 5.)

Based on the information obtained from the gait study, Stride Rite decided on two key objectives for its work in developing a new baby shoe. Stride Rite wanted to develop a baby shoe that would (1) successfully mimic the barefoot walking characteristics of a first walker, and (2) aid the stability of the first walker, rather than destabilizing the baby's gait. The Stride Rite Natural Motion System products (baby shoes which embody the claimed invention) were developed to meet these objectives. (Declaration of David Thorpe, paragraph 6.)

These objectives are not fundamental in the design of adult footwear. The mimicking of barefoot walking is essential to a first walker -- the closer a shoe comes to achieving this goal, the easier the child will adapt to walking in footwear. Stability is also crucial, as a first walker

adapting to footwear still has to master the art of balance. In contrast, an adult walker is already adept at walking, and has adapted to wearing shoes and perfected his or her balance.

(Declaration of David Thorpe, paragraph 10.)

None of the cited references teaches or fairly suggests a shoe outsole for a baby shoe. Instead, each of the references is directed to a shoe designed for use by adults.

As discussed in the Declaration of Dr. Edward Mostone, submitted herewith, there are significant differences between infant feet and adult feet.

Infant feet are not simply smaller versions of adult feet. For instance, an infant's foot is hyper-mobile, and has little or no arch, due to "baby fat." Moreover, the bones of an infant are very soft. Some bones do not even appear on an x-ray of an infant's foot, because ossification has not yet occurred. As a result, the bone structure of an infant's foot is moldable until the child is at least 4-6 years old. These characteristics do not occur in most normal adult feet.

(Declaration of Dr. Edward Mostone, paragraph 2.)

The gait of an infant is also different from that of an adult. Infants tend to waddle, with their toes directed outward in a "duck walk." A normal, adult gait is generally not achieved until the child is 6 to 8 years old. Infants also have great difficulty balancing on two feet -- as a result many infants tend to walk with their arms raised, in an effort to balance. Improper footwear can exacerbate these problems. Most normal adults do not suffer from these problems. (Declaration of Dr. Edward Mostone, paragraph 3.)

As discussed in the Declaration of David Thorpe, each of the cited references describes a shoe that is designed for adult use and would not be suitable for a first walker. The Tomat shoe does not have the flexibility required for a baby shoe. Instead, the Tomat shoe has a relatively thick, inflexible outsole, and Tomat requires the use of a bulky insole 12 (see col. 2, line 61 and Fig. 7). The other shoes described in the references include studded soles, footbeds and thick rounded soles that would not be suitable for use in a baby shoe. (Declaration of David Thorpe, paragraph 11.)

Moreover, Turner shows a sole for footwear and, as a design patent, provides no description as to the type of shoe with which the sole would be used. Patterson describes a golf shoe and Lennihan describes a running shoe, shoe types that clearly are not intended for use by babies.

Applicant : Kevin H. Gillespie  
Serial No. : 09/458,415  
Filed : December 10, 1999  
Page : 8

Attorney's Docket No.: 06129-156001

Thus, none of the cited references recognize the benefit of including, in a baby shoe, a relatively soft inner member positioned and dimensioned to fit under the baby's heel.

In view of the above, Applicant respectfully requests that the rejections under 35 U.S.C. §103 be withdrawn.

***Conclusion***

Attached is a marked-up version of the changes being made by the current amendment.

Applicant submit that this application is now in condition for allowance. Early favorable action is solicited. Submitted herewith is Petition for Automatic Extension, with a check for \$920.00 in payment of the extension fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date:

December 6, 2001

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**Version with markings to show changes made**

**In the specification:**

Paragraph beginning at page 5, line 3 has been amended as follows:

--Lower surface 22 includes a heel region 56 that defines additional grooves [37] 38.

Grooves [37] 38 in heel region 56 extend completely to side edges 28, 30. Although six grooves [37] 38 are shown in heel region 56, there may be more or less grooves [37] 38, or no grooves [37] 38.--

**In the claims:**

Claims 1, 4, 6, 7, 47, 48, 60, 66, 74 and 76 have been amended as follows:

--1. (Amended) A shoe outsole for a baby shoe, comprising:

an outer member including an inner heel region; and

an inner member located in the inner heel region and including a ground contacting surface, the inner member having a softer durometer than the outer member;

the shoe outsole being dimensioned for use in a baby shoe, and the inner member being positioned and dimensioned to fit under a baby's heel during use of the baby shoe.--

--4. (Amended) The shoe outsole of claim 1 wherein the inner member extends to within about 2 mm of a back edge of the [shoe outsole] outer member.--

--6. (Amended) The shoe outsole of claim 5 wherein the intermediate member extends to within about 1.5 mm of a front edge of the [shoe outsole] outer member.--

--7. (Amended) The shoe outsole of claim 5 wherein the intermediate member extends to within about 2 mm of a back edge of the [shoe outsole] outer member.--

--47. (Amended) A shoe outsole for a baby shoe, comprising:

an outer member [including an intermediate region and an inner heel region];

an inner member, located in an inner heel region of the shoe outsole; and

an intermediate member located in [the] an intermediate region of the shoe outsole, between the outer member and the inner member,

the intermediate member [and] having a softer durometer than the outer member, [the intermediate member] and including a plurality of ridges, and

[an] the inner member [located in the inner heel region and] including a ground contacting surface, [the inner member] and having a softer durometer than the outer member;

the shoe outsole being dimensioned for use in a baby shoe, and the inner member being positioned and dimensioned to fit under a baby's heel during use of the baby shoe.--

--48. (Amended) A shoe outsole for a baby shoe, comprising:

an outer member including [an inner heel region], a lower forefoot region, an opposite upper forefoot region, and a back wall, the back wall having a rounded contour extending smoothly between a horizontal plane and a vertical plane;

an inner member located in [the] an inner heel region of the shoe outsole, and including a ground contacting surface, the inner member having a softer durometer than the outer member;

a plurality of substantially parallel grooves defined in the lower forefoot region, [and] at least one of the plurality of grooves extending toward a front edge of the shoe outsole beyond a ground engaging portion of the lower forefoot region when flat footed;

[a plurality of substantially parallel grooves defined in the lower forefoot region;]

a plurality of substantially parallel ridges included in the lower forefoot region, at least some of the ridges being interdigitated with the grooves in the lower forefoot region; and

a plurality of substantially parallel grooves defined in the upper forefoot region;

the shoe outsole being dimensioned for use in a baby shoe, and the inner member being positioned and dimensioned to fit under a baby's heel during use of the baby shoe.--

--60. (Amended) The shoe outsole of claim 49 wherein the outer member includes a back wall having a rounded contour extending smoothly between a horizontal plane and a vertical plane.--

--66. (Amended) The shoe outsole of claim 61 wherein the outer member includes a back wall having a rounded contour extending smoothly between a horizontal plane and a vertical plane.--

--74. (Amended) The shoe outsole of claim 67 wherein the outer member includes a back wall having a rounded contour extending smoothly between a horizontal plane and a vertical plane.--

Applicant : Kevin H. Gillespie  
Serial No. : 09/458,415  
Filed : December 10, 1999  
Page : 11

Attorney's Docket No.: 06129-156001

--76. (Amended) The shoe outsole of claim 1 wherein the ground-contacting surface further includes an intermediate member, between the inner member and the outer member, having a softer durometer than the outer member, the durometer of the inner member being softer than the durometer of the intermediate member.--





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Kevin H. Gillespie  
Serial No. : 09/458,415  
Filed : December 10, 1999  
Title : SHOE OUTSOLE

Art Unit : 3782  
Examiner : A. Stashick

**Attention: Official Draftsman**  
Commissioner for Patents  
Washington, D.C. 20231

TRANSMITTAL OF AMENDED DRAWINGS

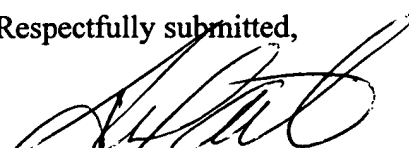
Enclosed are four (4) sheets of amended drawings for the application with changes indicated in red.

FIGS. 1-4 are amended in a manner to address various errors noted by the Examiner. FIG. 3 is also amended to correct use of reference number 37 to refer both to the upper backfoot region and to additional grooves.

Applicant submits that no new matter is introduced and requests approval of the amended drawings.

Respectfully submitted,

Date: December 6, 2001

  
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I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

DECEMBER 6, 2001  
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TIMOTHY A. FRENCH  
Typed or Printed Name of Person Signing Certificate



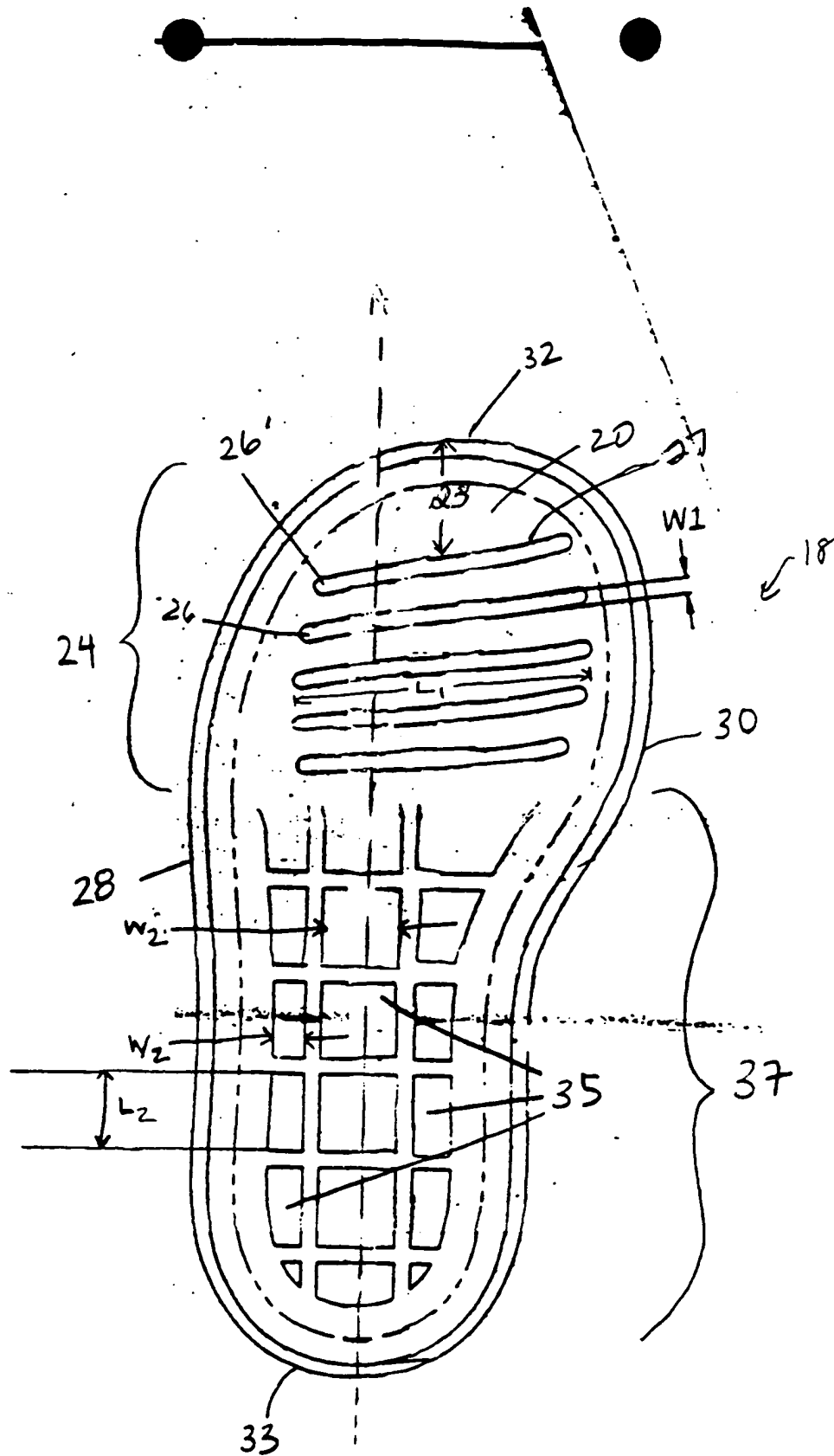


Fig. 2

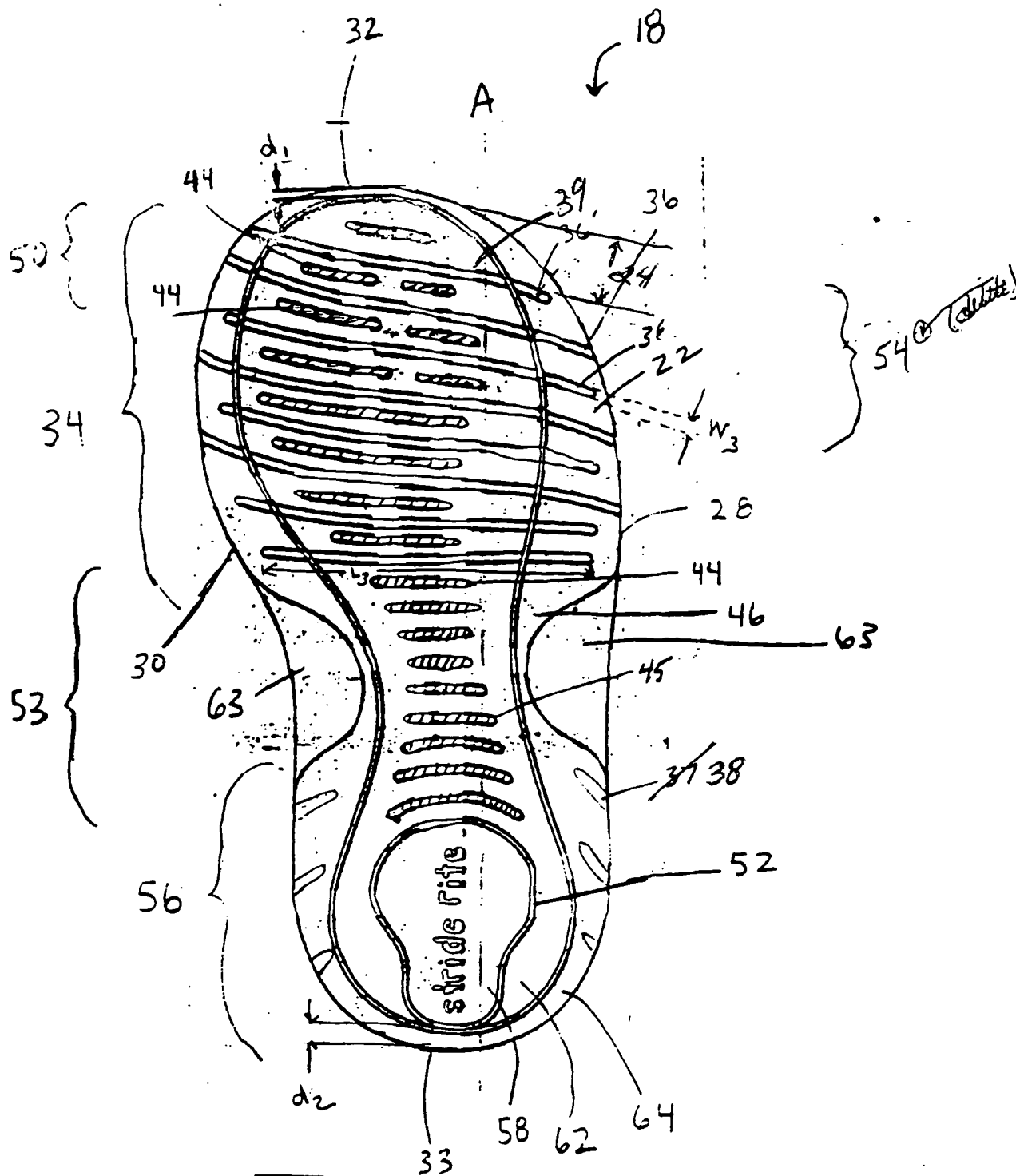


Fig. 3

Fig. 4

